

**Decl. of Geoffrey Potter
Exhibit 11**

FILED

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U.S. DISTRICT COURT E.D.N.Y.

★ APR 29 2016 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABBOTT LABORATORIES et al.,

BROOKLYN OFFICE

Plaintiffs,
-against-

ADELPHIA SUPPLY USA et al.,

Defendants.

-----x
NOT FOR PUBLICATION
MEMORANDUM & ORDER
15-CV-5826 (CBA) (MDG)

AMON, United States District Judge:

Before the Court is the third request for a preliminary injunction from plaintiffs Abbott Laboratories, Abbott Diabetes Care Inc., and Abbott Diabetes Care Sales Corp. (collectively, "Abbott"). The Court has already granted preliminary injunctions against two groups of defendants in this trademark-infringement action. (See D.E. # 131, "First P.I. M&O"; D.E. # 258, "Second P.I. M&O.") Abbott now seeks a temporary restraining order ("TRO") and preliminary injunction against a third group of defendants, namely 206 new defendants associated with 108 independent sellers of the international FreeStyle diabetic test strips at issue in this case (collectively, the "new defendants"). (See D.E. # 309 at 4.) The Court issued an order to show cause why a TRO and preliminary injunction should not issue that set a briefing schedule and a hearing date. (See D.E. # 314.) No defendants opposed the TRO, in writing or at the TRO hearing. (See Minute Entry dated April 7, 2016.) The Court therefore granted the unopposed TRO. (See D.E. # 352.)

Similarly, no party has opposed the preliminary injunction, either in writing or at the evidentiary hearing held on April 25, 2016.¹ The Court now grants the unopposed request for a preliminary injunction.

FACTUAL FINDINGS

Many of the Court's factual findings from the First P.I. M&O apply equally to the instant request. As the Court found there, Abbott owns the family of trademarks that appear on FreeStyle and FreeStyle Lite blood glucose test strips, which individuals with diabetes use to monitor their blood-sugar levels. (First P.I. M&O at 2.) Abbott sells FreeStyle strips in the United States and around the world. (*Id.*) Although the test strips themselves are identical wherever sold, the international packages contain a number of differences from the domestic ones, discussed in detail in the First P.I. M&O. (*Id.* at 2–5.) Abbott proffers uncontested evidence that the new defendants engaged in the domestic sale of international FreeStyle test strips. (See D.E. # 307, Second Am. Compl. ¶¶ 52, 54, 70–71, 95–248, 283–89; D.E. # 310, Declaration of Geoffrey Potter dated March 28, 2016; D.E. # 311, Declaration of Thomas J. Kneir dated March 25, 2016; D.E. # 312, Declaration of Brian Cairl dated March 28, 2016.)

STANDARD OF REVIEW

A plaintiff seeking a preliminary injunction must show (1) that there is either a likelihood of success on the merits or sufficiently serious questions going to the merits; (2) that there is a likelihood of irreparable harm for which remedies at law would be inadequate; (3) that the balance of hardships tips in the plaintiff's favor; and (4) that the public interest would not be disserved by issuing preliminary relief. See *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Am. Civil*

¹ Many of new defendants have stipulated to the preliminary injunction. (See D.E. # 320, 322, 323, 333, 334, 335, 336, 338, 339, 342, 345, 346, 348, 349, 357, 363, 366, 367, 368, 369, 370, 383, 396, 397, 408, 411.) Abbott has voluntarily dismissed others. (See D.E. # 337, 347, 358.)

Liberties Union v. Clapper, 785 F.3d 787, 825 (2d Cir. 2015); Salinger v. Colting, 607 F.3d 68, 79–80 (2d Cir. 2010).

LEGAL CONCLUSIONS

As stated above, Abbott’s request for a preliminary injunction is uncontested. As the Court has already twice found, Abbott is likely to succeed on the merits of its trademark-infringement claim because the differences between international and domestic FreeStyle test strips are material and the gray marketing of those strips interferes with Abbott’s quality-control measures. (See First P.I. M&O at 8–15; Second P.I. M&O at 5–11.) Absent preliminary relief, Abbott will likely suffer irreparable harm to its consumer goodwill or reputation. (See First P.I. M&O at 15–23; Second P.I. M&O at 11–13.) The hardships balance in Abbott’s favor, and preliminary relief does not disserve the public. (See First P.I. M&O at 23–24; Second P.I. M&O at 13–14.) Abbott therefore satisfies the requirements for preliminary injunctive relief.

CONCLUSION

For these reasons, Abbott's request for a preliminary injunction is GRANTED. The attached ORDER details the terms of the injunction.

SO ORDERED.

Dated: April 20, 2016
Brooklyn, New York

s/Carol Bagley Amon
Carol Bagley Amon
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 29 2016 ★

ABBOTT LABORATORIES, ABBOTT
DIABETES CARE INC., and ABBOTT
DIABETES CARE SALES CORPORATION,

Plaintiffs,

-against-

ADELPHIA SUPPLY USA; YUDAH NEUMAN
A/K/A LENNY NEUMAN; REUVEN SOBEL
A/K/A CHAIM SOBEL; MOSES NEUMAN;
SAVE RITE MEDICAL.COM LLC; MARC
KAPLAN; MATRIX DISTRIBUTORS, INC.;
CHRISTOPHER BENEVENT; SETH GRUMET;
H&H WHOLESALE SERVICES, INC.;
HOWARD GOLDMAN; LORI GOLDMAN;
PAPOUTSANIS USA, LLC D/B/A VIP
INTERNATIONAL – DROGARIS; GEORGE
DROGARIS; OSD CAPITAL, INC. F/K/A
FARNES ENTERPRISES CORPORATION;
OVERSTOCKDRUGSTORE.COM LLC D/B/A/
SIMPLEMED SUPPLY; RICK EVENSON;
BUDGET HEALTH CORPORATION D/B/A
BUDGET DRUGS PHARMACY; LORI BLUE;
ANTHONY MEOLA; MARK D. HENKIN;
DREAM CEREAL INC. D/B/A
DIABETESSUPPLIES4LESS.COM; DOUGLAS
HAUCK; BERKELEY DRUGS INC.; MAJID
HAMEED; EUGENE HA; CAREWAY
PHARMACY INC.; ANATOLIY FAIN;
HARRICO-GALLER DRUG CORPORATION;
JOHN GALLAGHER; HABER J&N INC. D/B/A
THE MODERN CHEMIST; NAOMI HABER;
JERRY HABER; NORSTRAND PHARMACY,
LLC D/B/A VANDERVEER PHARMACY;
SARATHCHANDRA ADUSUMALLI;
HEMAGIRI GAYAM; LEV RX CORP. D/B/A
KIRA'S PHARMACY; KIRA LEVKOUSKAYA;
ELIYAHUS PHARMACY, INC.; ILIAS

BROOKLYN OFFICE

NOT FOR PUBLICATION
PRELIMINARY INJUNCTION ORDER
15-CV-5826 (CBA) (MDG)

MLABASATI; GLOBAL CARE PHARMACY, :
INC.; D.K.Y. ENTERPRISES, INC. D/B/A 8TH :
AVENUE PHARMACY; KIM PING JIM; TGIS :
PHARMACY, INC. D/B/A SUNRISE FAMILY :
PHARMACY; SAJID JAVED; BAY PHARMACY :
INC.; IRENE PIKER; B & T MARLBORO :
PHARMACY, INC.; ANATOLY :
GOROKHOVSKY; LARKE DRUGS, INC. D/B/A :
110 PHARMACY & SURGICAL; PRASAD :
VENIGALLA; LA RUCHE PHARMACY, INC.; :
SUNIL B. PATEL; ESTATES PHARMACY, INC.; :
MOHAMMED NURUDDIN; NOVEX AMERICA; :
DENNIS CANTOR; TRI-STATE MEDICAL :
SUPPLIES EQUIP. CORP.; ERWIN :
GANZFRIED; MORDECHAI KRITZLER; :
VALUE WHOLESALE, INC.; DIANE BROWN; :
MEDICAL DISCOUNT SERVICES, INC.; BRIAN :
MESIKA; DARRYL SCHREIBER; XPRESS :
MEDICAL SUPPLIES CORP.; MOHAMMED :
PATEL; ZUBEDA MOTI; MUHAMMAD ARIF; :
SAPS DRUG WHOLESALE, INC.; VILAS :
ASMIN; RAJESH AMIN; NIMESH AMIN; :
IXTHUS MEDICAL SUPPLY, INC.; KARL :
KUNSTMAN; COMPLY USA INC.; IRANY NIR; :
OFEK MESSIKA; KIMBERLY PASZKIEWICZ; :
DRUGPLACE, INC.; PAUL LEIGHT; KEVIN :
SINGER; HMF DISTRIBUTING INC.; :
WHOLESALE DIABETIC SUPPLIES INC.; :
ROSS TRAGER; MATTHEW FRANK; PRIMED :
PHARMACEUTICALS LLC; VINCENT :
MONDENADO; MATTHEW ZEIGLER; NE :
MEDICAL SUPPLY USA, INC.; DANIELLE :
WAYNE; NICK WAYNE; TAS MEDICAL :
SUPPLY, INC.; TZVI SKLARZ; PRODUCT :
PERFORMANCE COMPANY, INC.; JERROLD :
HERMAN; STEPHEN HERMAN; MED-PLUS, :
INC.; ROGER MEZHIBOVSKY; DELRAY :
MARKETING, LLC; STEVE MICHAELS; :
DIABETIC PHARMACY SOLUTIONS, LLC; :
KARL BUCHOLZ; GLOBE WANTED; :
MASSALAH TRADING U.S.A. LTD.; SAAD :
(SAM) HADDAD HAVEMEYER PHARMACY :
INC.; MICHAEL BASSANELLI; and JOHN DOES :
1-10, :
Defendants. :
:

For purposes of this Order, "International FreeStyle Test Strips" means any box of test strips:

1. Bearing any of the following trademarks:

- a. FREESTYLE (Reg. No. 3,111,863); or
- b. FREESTYLE LITE (Reg. No. 3,488,499); or

c.



, which consists of a butterfly with a silver body, black wings, yellow and orange oblong shapes on the wings with two rows of white spots going around the oblong shapes and with blue shading (Reg. No. 4,210,535); or

- d. ABBOTT (Reg. Nos. 3,724,557; 3,842,268; 3,842,269; 4,023,123); or

e.



(Reg. Nos. 1,542,129); and

2. Having, or containing a packaging insert having, any of the following characteristics:

- a. Indicating that a blood sample for use with the test strips can be drawn from a location other than the finger, palm, or upper arm; or
- b. Lacking a National Drug Code (NDC) number; or
- c. Lacking the U.S. toll-free phone number 1-888-522-5226.

It is hereby ORDERED that defendants Medical Discount Services, LLC d/b/a Medical Wholesale Supplies; Bob-Bila Distributors, Inc.; Goolam Sheikh; Coolrelic, Inc.; Ralph Amato; E-Pharm Wholesalers, Inc.; Eduardo Gil; G&P Supplies, Inc.; Harmanpreet Bal; Gurpreet Singh; Bishan Singh Ghotra; Lightbox Medical LLC; Jonathon Nikolas Woods; Magchop, LLC; Kenneth Ruiz; Noemi Ruiz; YS Marketing Inc. f/k/a NuMed Pharma Inc.; Joel Silberstein;

Pharma Supply, Inc.; Oliver Suess; Steven Thuss; Power Distribution Enterprises LLC; Stephen M. Krause; Savoy Medical Products, LLC d/b/a Savoy Medical Supply Co.; Guy Savia; Shie Greenfield; Kimberly Stevens d/b/a Strips2Cash; Pharmacy Wholesale Services Inc. a/k/a Professional Pharmacy Wholesale Services Inc.; Douglas Parker Rudderham; Advanced Pharmacy LLC; Gregory Peter Santulli; Advanced Scripts Inc.; Carepointe Health Care Corporation; Gregory S. Dixon; Childrens Clinic Pharmacy; Priority Care Pharmacy LLC a/k/a Priority Healthcare Corp.; Konie Minga; Goodlife Pharmacy Inc.; Fifty50 Medical, LLC; George (Rick) Lynch; Stampmatic; Deepak Munshi; NPR BioMedical Inc.; Paritosh Mazumder; Lehigh Pharmacy & Supplies, Inc. d/b/a Cape Pharmacy & Supplies; Stephen M. Krause; Marleny Canete; M & L Brothers Pharmacy, Inc.; Leslie Stewart Jones; Physician Choice Pharmacy LLC; Jason Grama; Casharim Trading a/k/a Cashrim; Raanan Cohen; Express Chemist; John Seal; Dennis Charles Pay; Rosemary Elizabeth Ann Pay; FCL Health Solutions Ltd.; Kulbir Singh Sohi; Jasvir Singh Sohi; Globalmed Limited a/k/a Globalmed Pharmaceutical Wholesaler; Paul Michael Capper; Product Trade Services Ltd.; Nigel Huw Bush; David John Tipp; Smartway Pharmaceuticals Ltd.; Smartway PW Holdings Ltd.; Kiri Patel; Bhanumati Patel; Danny Katz; David Strathy d/b/a Bargain Pawn; Gregory Sargent; NWHOLESALEDEALS, INC.; Hsiu Sargent; Thomas Gulik; Carl C. Telander; Attila Kekesi; Pat Kekesi; Astute Healthcare Limited d/b/a e-net solution; Hetasveeben Mahendrabhai Vanapariya; Jigal Patel a/k/a Jignal Patel; MISAR LLC; Brian Boeshart; Leslie Boeshart; Jacqueline Herrera; Valley Liquidation Services LLC d/b/a VLS, LLC; Patricia Herman; Clinton Herman; Jennifer Herman; Premier Equipment Solutions, Inc.; Peter E. Sutulov; Trusted Medical Supply, LLC; Dwayne Porter; Danjal Hansen; Product Ltd.; Tiffany Riggs; Leonid Beigelman; National Medical Management Inc.; Issa Kashou; Edward Connell; Yusuf Muse a/k/a Yusuf Mohamed; Ran Lev; Brian McClelland; James H. Redecopp; Christopher Aarons; Avi Frankman; Ashraf Awad; Jiri Svec; Ella Sela d/b/a

ELLA'S VISION; Konstantinos Polychronopoulos; Joseph Karas; Laurynas Lemesovas; Tadas Lemesovas; Luis Santiago; Spyridon Psonis d/b/a Parapharmacy Store; N Hosking & S Duffell d/b/a Towers Pharmacy; Simon R. Duffell; Neil J. Hosking; Raleigh Paoletta-Titschinger; Al Gray d/b/a S D'FROG; Manish Mittal; 86th Street Community Pharmacy; Gary Kagan; Vickie Martino; N A & S Drugs, Inc. d/b/a Falcon Health-Mart Drugs; Diptibahen Patel; Lafayette Drugs, Inc.; William Semaan; Medex Supply Distributors Inc.; Chaya Braish; Moshe Braish; Delwar Kahn; 6122 Pharmacy, Inc.; Kong Cheung a/k/a Kong Carl Cheung Tung; Bridesburg Pharmacy; Shenay Ussein; Nessin Ussein; Gabecare Direct Rx, Inc.; Santa Zawaideh; Discover Pharmacy Inc.; Nader Parsian; QRx Pharmacy and Healthcare Supplies, Inc. d/b/a QRx2 Pharmacy & Medical Supplies Inc.; Sayed Raza a/k/a Syed Hasan; Total Pharmacy Inc. d/b/a EZ Pharmacy; Nabila Chaudhry; Qaiser Chaudhry, and John Does 1-10; and their principals, agents, officers, directors, members, servants, employees, successors, assigns, and all other persons in concert and participation with them are preliminarily enjoined pending the final hearing and determination of this action from importing, purchasing, selling, distributing, marketing, or otherwise using in commerce in the United States any International FreeStyle test strips as defined above, or assisting, aiding, abetting, or acting in concert and participation with any other person or business entity in engaging in or performing any of the activities referred to in this paragraph.

SO ORDERED.

s/Carol Bagley Amon



Carol Bagley Amon
UNITED STATES DISTRICT JUDGE

Dated: April 28, 2016
Brooklyn, New York